

**MEMORANDUM**

**TO:** District of Columbia Board of Zoning Adjustment

**FROM:** Arthur Jackson, Case Manager  
Joel Lawson, Associate Director Development Review

**DATE:** December 4, 2012

**SUBJECT:** **BZA Case 18471** - request for a use variance from §§ 201, 216 and 350.4 to allow a theater use to co-locate with an existing church use on property located at 1810 16<sup>th</sup> Street NW.

**I. OFFICE OF PLANNING RECOMMENDATION**

The Office of Planning (OP) **cannot recommend approval** of the use variance requested to allow a theater use to continue operating in the basement of a church on the subject property, because the application did not sufficiently establish any uniqueness or exceptional and undue hardship in the case.

**II. LOCATION AND SITE DESCRIPTION:**

Address:	1810 16 <sup>th</sup> Street NW
Legal Description:	Square 0177, Lot 0802
Ward:	2B
Lot Characteristics:	A rectangular corner lot with an area of 11,750 square feet (0.27 acre) that abuts an alley 10 feet wide (refer to Figure 2).
Zoning:	<i>DC/R-5-B</i> – theater uses are not allowed as a matter of right or by special exception in the base zone district.
Existing Development:	According to DC land records, the existing three-story building with a basement was constructed in 1930. The frontages of S Street NW and 16 <sup>th</sup> Street extend along the southern and eastern property borders, respectively. Based on the annotated plat from the DC Office of the Surveyor that was submitted with this application, the existing building is set back from S Street and the adjacent alley along the western boundary. The building occupies approximately $\frac{3}{4}$ of the site. An open courtyard surrounded by a masonry wall attached to the building occupies the northwest corner of the site. There are several parallel parking spaces between the building and the alley in the southwest corner the property (refer to Figures 1, 2).
Historic District:	Sixteenth Street
Adjacent Properties:	Three-story row dwelling on properties to the north along 16 <sup>th</sup> Street in the same zone; an 8-story apartment building to the south across S Street, a 7-story apartment building to the east across 16 <sup>th</sup> Street, and the Scottish Rite of Free Masonry Supreme Council #33 Museum and Library (Temple) to the southeast across the S Street intersection with 16 <sup>th</sup> Street in a DC/R-5-D district; and 2-3 story row dwelling to the west along S Street NW in a R-5-B district.



### III. PROJECT DESCRIPTION IN BRIEF

Applicant:	The Universalist National Memorial Church, owner of record.
Proposal:	<p>To secure variance relief to allow a theater use operated in the church basement by a separate entity (“Spooky Action Theater”) as a tenant, to continue. According to the application, this new use operates without a fixed stage or fixed seating in Perkins Hall, the 7,400 square-foot multipurpose room. Current and future <i>church-related activities</i> previously held in this space would continue under this proposal. The theater company is not affiliated with church functions.</p> <p>According to the Zoning Administrator (ZA), the theater use was discovered during a visit to the site in response to a complaint from a neighboring property owner. The ZA determined that a non-profit performing arts company with performances open to the general public that operates on the same property as the existing church use requires a separate CO. The applicant indicated that Spooky Action Theater has operated onsite approximately one year.</p> <p>After discussions with the property owner and tenant, the ZA issued temporary CO No. 1202419, on September 14, 2012, to allow the existing theater use to continue “... for public performance of 16 plays” through December 31, 2012. This zoning application was submitted in August 2012 requesting the necessary variance relief for the existing theater use.</p>
Relief Sought:	Variance relief to allow the continuation of the existing theater use not currently allowed as a matter of right use under § 350.4 or by special exception in the R-5 district.

### IV. ZONING REQUIREMENTS

Section 350.4 of the regulations lists the allowable uses in the R-5 district. A theater use is not on that list. A theater is also not permitted by special exception in this district.

Private and public theater uses are first allowed in the Mixed Use Commercial Residential (CR) District and theater uses including movie theaters are first permitted in the C-2 district.

In accordance with § 2120.3, no parking is required for the theater use because the subject church building has been determined to contribute to the 16<sup>th</sup> Street Historic District.

Figure 1



## V. OP ANALYSIS:

### Variance relief from § 401.3

- **Uniqueness resulting in an exceptional and undue hardship**

The application does not identify any exceptional topographical conditions onsite or explain any other extraordinary or exceptional situation or condition related to the subject property that existed prior to establishment of the theater use. The Pre-hearing Statement dated November 17, 2012, suggested three exceptional conditions: damages to the building resulting from the 2011 earthquake, an underutilized basement space and declining church membership. According to the Statement, the church will be unable to raise sufficient funds to make the needed basement improvements and other building repairs *without* the anticipated income from the theater use.

While these issues are important and OP is supportive of creative uses to activate underutilized spaces like this, needed building repairs and a lack of church attendance are not issues directly related to zoning. These are operational issues. Based on a site visit and the submitted plat, there does not appear to be any condition or circumstance that prevents the subject property from being utilized by the *existing* church. It also appears from the available land records that a church use has operated on the subject property since the existing building was constructed in 1930.

Therefore since no uniqueness was identified that prevents the subject property from being occupied by a use allowed in this district, no associated exceptional or undue hardship was established in this case.

- **Substantial Detriment to the Public Good**

The application indicated that a companion theater use would not be detrimental to the public good because: the proposed maximum audience of 75 persons would not increase (exceed) the maximum number of occupants permitted in the church basement, 225; additional lighting at the rear door of the church during performances and foot traffic would make the “area” more secure; the site is very

Figure 2



accessible to public transit that would serve theater employees and patrons; and limited off-street parking has been secured during performances at the Masonic Temple across the intersection. A small performing arts company was also anticipated to enhance the neighborhood quality of life and the church would (ultimately) be repaired and restored as a result of the proceeds.

The application indicated that theater attendance so far has ranged from 5 to 20 persons. It is therefore unclear what impact 48 or more performances annually with higher attendance, up to the proposed maximum of 75 persons, would have on the surrounding neighborhood.

- **Substantial Harm to the Zoning Regulations**

Granting the zoning relief as requested would be contrary and detrimental to the intent and integrity of the Zoning Regulations. A theater use is not allowed in any Residence district *or* the lowest-intensity Neighborhood Shopping (C-1) mixed use commercial district as a matter of right or by special exception. Establishment of a theater use on this property is also contrary to the following goal of the Dupont Circle overlay district:

(c) *“Enhance the residential character of the area by maintaining existing residential uses and controlling the scale, location, and density of commercial and residential development; ...”*

This application has not sufficiently made the case for allowing a commercial theater use to share the subject property with this established church use in a residence district.

## **VI. COMMUNITY COMMENTS**

On November 19, 2012, Advisory Neighborhood Commission (ANC) 2B unanimously approved a resolution to support this request with the stipulation that the application be amended as follows:

- 1) Restrict to the front entrance of the Church all audience and staff coming to all public events held in the auditorium, whether sponsored by Spooky Action Theater or sponsored by (The Universalist National Memorial Church) UNMC.
- 2) Restrict to the front entrance staff and performers coming to the Church for rehearsals or auditions.
- 3) Restrict to the front entrance audience, staff and performers who leave the building for smoking breaks or intermissions.
- 4) Exceptions to these restrictions are ADA access, which is best accomplished through the alley entrance, deliveries of materials and equipment, and emergency exit.
- 5) Limit attendance to productions by the theater renting space in the UNMC auditorium to 75, though other non-performance events sponsored by the theater or any event sponsored by the UNMC itself may use the full 225 person capacity of the auditorium.
- 6) Remove the restriction on the number of performances that may be held during a one year period.

In the Pre-hearing Statement, the applicant agreed to these conditions. The ANC resolution also referred to negotiations that would be required between the theater, the church, its neighbors and the ANC to address a list of other related issues.